

**RESOLUTION NO. 75328**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE APPROVING THE ISSUANCE BY THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE OF ITS MERGED AREA REDEVELOPMENT PROJECT HOUSING SET-ASIDE TAX-EXEMPT REFUNDING TAX ALLOCATION BONDS, HOUSING SERIES 2010A IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$57,000,000 AND ITS MERGED AREA REDEVELOPMENT PROJECT HOUSING SET-ASIDE TAXABLE REFUNDING TAX ALLOCATION BONDS, HOUSING SERIES 2010B, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$15,000,000 AND ITS MERGED AREA REDEVELOPMENT PROJECT TAXABLE SUBORDINATE HOUSING SET-ASIDE TAX ALLOCATION VARIABLE RATE BONDS, SERIES 2010C IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$93,000,000; APPROVING THE EXECUTION AND DELIVERY OF THE FISCAL AGREEMENTS, A CONTINUING COVENANT AGREEMENT AND ONE OR MORE TAX REGULATORY AGREEMENTS; APPROVING THE SALE AND ISSUANCE OF THE BONDS FOR PURPOSES OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982 ("TEFRA"); APPROVING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH**

**WHEREAS**, the Redevelopment Agency of the City of San José (the "Agency") is a duly constituted public body, corporate and politic, established pursuant to the Community Redevelopment Law of the State of California (being Part 1 of Division 24 of the Health and Safety Code of the State of California, as amended) (the "Law"); and

**WHEREAS**, the Law requires that not less than 20% of all taxes allocated to a redevelopment agency (the "Housing Set-Aside Amounts") be utilized to increase, improve and preserve the community's supply of low and moderate income housing available at affordable housing cost; and

**WHEREAS**, pursuant to that certain Cooperation Agreement, dated September 28, 1990 (as amended, the "Cooperation Agreement"), by and between the Agency and the City of San José (the "City"), the Agency extended its delegation to the City of its statutory authority to administer the expenditure of Housing Set-Aside Amounts; and

**WHEREAS**, pursuant to the Law, the Agency will authorize the issuance of its Merged Area Redevelopment Project Housing Set-Aside Tax-Exempt Refunding Tax Allocation Bonds, Housing Series 2010A (the "Series 2010A Bonds") in an aggregate amount not

to exceed \$57,000,000 and its Merged Area Redevelopment Project Housing Set-Aside Taxable Refunding Tax Allocation Bonds, Housing Series 2010B in an aggregate principal amount not to exceed \$15,000,000 (the "Series 2010B Bonds" and together with the Series 2010A Bonds, the "Senior Bonds"), and its Merged Area Redevelopment Project Taxable Subordinate Housing Set-Aside Tax Allocation Variable Rate Bonds, Series 2010C (the "Series 2010C Bonds" or the "Subordinate Bonds," and collectively with the Senior Bonds, the "Bonds") in an aggregate principal amount not to exceed \$93,000,000; and

**WHEREAS**, to provide for the payment of the principal of and interest on the Senior Bonds and other Parity Obligations (as defined in the Senior Fiscal Agreement), the Agency will transfer to the City the Housing Set-Aside Amounts, all as described in the Fiscal Agent Agreement, dated as of February 1, 1993, between the Agency and First Interstate Bank of California, as heretofore amended and supplemented and as amended and supplemented by the Eighth Supplemental Agreement by and between the Agency and Wells Fargo Bank, National Association, as successor fiscal agent thereunder (collectively, the "Senior Fiscal Agreement"); and

**WHEREAS**, to provide for the payment of the principal of and interest on the Subordinate Bonds and other Parity Debt (as defined in the Subordinate Fiscal Agreement), the Agency will transfer to the City the Subordinate Housing Set-Aside Amounts, all as described in the subordinate Fiscal Agreement, by and between the Agency and Wells Fargo Bank, National Association, as fiscal agent thereunder (the "Subordinate Fiscal Agreement", and collectively together with the Senior Fiscal Agreement, the "Fiscal Agreements") and in connection with a proposed private placement sale of the Subordinate Bonds to Wells Fargo Bank, National Association or an affiliate thereof (the "Purchaser") the Agency will enter into a Continuing Covenant Agreement supplementing the Subordinate Fiscal Agreement and further securing the Subordinate Bonds (the "Continuing Covenant Agreement"); and

**WHEREAS**, in connection with the issuance of the Bonds, the City may enter into one or more Tax Regulatory Agreements (each a "Regulatory Agreement," and collectively, the "Regulatory Agreements") with the developers of certain of the projects to be financed and refinanced with proceeds of the Bonds; and

**WHEREAS**, the plan is to refinance the Agency's Merged Area Redevelopment Project Subordinate Housing Set-Aside Tax Allocation Variable Rate Demand Bonds Series 2005C and Merged Area Redevelopment Project Subordinate Housing Set-Aside Tax Allocation Variable Rate Demand Bonds Series 2005D which were issued to finance and refinance various projects, with proceeds from the Series 2010A Bonds, as listed in the notice published on March 8, 2010 in the San José Mercury News (the "Notice");

**WHEREAS**, pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the issuance of the Series 2010A Bonds must be approved by the City;

**WHEREAS**, the Council of the City (the "City Council") is the elected legislative body of the City and is one of the applicable elected representatives required to approve the issuance of the Series 2010A Bonds under Section 147(f) of the Code; and

**WHEREAS**, the Notice was published, at least 14 days before the date of the public hearing, in a newspaper of general circulation within the jurisdiction of the City, noticing that a public hearing regarding the Series 2010A Bonds would be held on March 23, 2010; and

**WHEREAS**, this Council conducted the public hearing on March 23, 2010 at which time an opportunity was provided to interested parties to present arguments both for and against the issuance of the Series 2010A Bonds; and

**WHEREAS**, it is intended that this resolution shall constitute the approval of the issuance of the Series 2010A Bonds as required under Section 147(f) of the Code; and

**WHEREAS**, pursuant to the Law, the City Council has reviewed said financing as proposed and desires to declare its approval thereof in accordance with Section 33640 of the Law;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**Section 1. Approval of Issuance of Bonds.** The issuance and sale of the Series 2010A Bonds in an aggregate principal amount not to exceed \$57,000,000 and the Series 2010B Bonds in an aggregate principal amount not to exceed \$15,000,000, and the Series 2010C Bonds in an aggregate principal amount not to exceed \$93,000,000, by the Agency for the purpose of financing and refinancing projects, loans and programs to increase, improve and/or preserve the supply of low and moderate income housing in the City, are hereby authorized and approved.

The Bonds may be issued in any combination of Series or sub-series that are taxable, tax-exempt, fixed rate or variable rate, not inconsistent with this Resolution (including, but not limited to, two Series or sub-series of the Series 2010A Bonds as necessary or desirable to comply and/or correspond with Federal tax law requirements) and the names and Series designations of the Bonds may be changed all as provided in the final executed version of the Eighth Supplemental Agreement, Senior Fiscal Agreement, the Subordinate Fiscal Agreement and Continuing Covenant Agreement.

**Section 2. TEFRA Approval.** It is the intent of the City Council that this Resolution constitutes approval of the Series 2010A Bonds and the projects listed in the Notice for purposes of Section 147(f) of the Code.

**Section 3. Finding Pursuant to Section 33334.2(g) of Redevelopment Law.** The City Council hereby finds and determines pursuant to Section 33334.2(g) of the Law that the Merged Area Redevelopment Project of the City of San José will benefit from the projects that are located outside of the area of the Merged Area Redevelopment

Project, which projects the Agency intends to finance with the proceeds of the Bonds or to otherwise fund from Housing Set-Aside Amounts.

**Section 4. Further Actions Authorized.** The City Manager, the Assistant Director of Finance and the Director of Housing are hereby authorized and directed, jointly and severally, to execute and deliver the Regulatory Agreements, Fiscal Agreements and Continuing Covenant Agreement and to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this Resolution. Such actions heretofore taken by such other person or persons designated by the City Manager, the Assistant Director of Finance and the Director of Housing are hereby ratified, confirmed and approved. The City Manager, the Assistant Director of Finance and the Director of Housing are hereby further authorized, in consultation with the City Attorney, to execute amendments or modifications to or restated versions of any and all such documents for any purpose such officers deem necessary, including but not limited to providing for credit or liquidity facility for the Subordinate Bonds and appointments of firms to act as or replace the fiscal agent, remarketing agent (if any) or the provider of any credit or liquidity facility.

ADOPTED this 30th day of March, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, KALRA,  
LICCARDI, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.


ABSENT: Herrera.

DISQUALIFIED: NONE.

ATTEST:



LEE PRICE, MMC  
City Clerk



CHUCK REED  
Mayor